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DATE: 28 MAY 21 / 11:32 AM

GUAM ENVIRONMENTAL PROTECTION AGENCY • AHENSIAŇ PRUTEKSIÓN LINA'LA' GUÅHAN

LOURDES A. LEON GUERRERO • GOVERNOR OF GUAM | JOSHUA F. TENORIO • LIEUTENANT GOVERNOR OF GUAM
WALTER S. LEON GUERRERO • ADMINISTRATOR | MICHELLE C. R. LASTIMOZA • DEPUTY ADMINISTRATOR

CPY
GPPC, Inc.
(Respondent)
Mr. Chieng Tan, President
539 Bello Road
Barrigada, Guam 96913
Contact # 633-7910

MAY 28 2021

Subject: Notice of Violation / Compliance Order / Proposed Penalty Order

The stated purpose of the Guam Soil Erosion and Sediment Control Regulations (GSESCR), 22 GAR Chapter 10, as implemented by Public Law 25-152, is "to control accelerated soil erosion, thereby preventing the pollution of Guam's waters from fertilizers, pesticides, sediments and other polluting substances carried by sediment, and to protect property and to promote the public health, safety and welfare by regulating grading, clearing, grubbing and stockpiling, and by setting minimum standards for erosion and sedimentation control for the island of Guam." As described herein, the Guam Environmental Protection Agency (GEPA) finds that GPPC Inc. ("Respondent") has violated the GSESCR and is ordered to undertake remedial action(s).

BACKGROUND

Respondent is actively engaged in earth moving operations as a part of a construction project located at the Crowne Plaza Resort (Formerly the Fiesta Hotel), 810 Pale San Vitores Road, Tumon, permitted under DPW Building Permit No. B20000645. On the evening of May 26, 2021, GEPA Chief Engineer CAPT Brian Bearden, PE, observed several violations of the GSESCR while walking past the site on the shoreline. Specifically, he observed that the silt fence had not been installed with the bottom of the fabric buried as per standard installation details as specified in the Erosion and Sediment Control (E&SC) Plan approved by GEPA as part of the Building Permit, or as provided with GEPA's Building Permit conditional approval letter, Condition 1, Attachments ESC-1 and ESC-1A. The manner in which the silt fence was installed rendered it completely ineffective and left the site unprotected, with the potential for direct discharge of sediments to the immediately adjacent marine waters. In addition, he observed an excavated channel which by its configuration and grade would result in the conveyance of surface runoff from the site of active demolition and construction directly to the beach and adjacent marine waters.

See attached report for additional details and photographs.

NOTICE OF VIOLATION

Based on the facts described above, GEPA finds that Respondent violated the following provisions of the Guam Soil Erosion and Sediment Control Regulations, 22 GAR Chapter 10, as implemented by Public Law 25-152:

1. 22 GAR §10105(A)(1) Erosion and Sediment Control Plans and Measures: General policies for Erosion and Sediment Control. *All earth-moving operations on Guam shall be conducted in a manner that prevents accelerated land erosion, transportation of sediment to and along highways, or siltation of rivers, estuaries and marine waters.*

Respondent failed to conduct the earth moving activities undertaken at the site in a manner that prevents accelerated land erosion and siltation of marine waters. Specifically, the earth-moving activities were being conducted without the proper installation or use of erosion and sediment control best management practices (BMPs).

2. 22 GAR §10104(C)(1) Erosion and Sediment Control Plans: Compliance. *All clearing, grading, embankment or filling, excavating and other earth moving operations, except those otherwise exempted from these regulations by the Administrator, must proceed in accordance with a duly approved Erosion and Sediment Control Plan.*

Respondent failed to implement erosion and sediment control best management practices (BMPs) in accordance with the approved Erosion and Sediment Control Plan.

COMPLIANCE ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, Respondent is HEREBY ORDERED to undertake the following remedial actions:

1. **Immediately upon receipt of this order:** Cease all earth moving and construction work underway on the outdoor portions of the project site, and do not resume until all best management practices (BMPs) required by the approved E&SC plan have been properly installed.
2. **As soon as possible:**
 - a. Correct the installation of silt fence in accordance with standard silt fence installation details as contained in the approved E&SC plans and the 2006 CNMI & Guam Stormwater Management Manual (as adopted by Executive Order 2012-02) ("the Manual");
 - b. Remove the excavated channel leading from the pool area to the beach, and direct all runoff from this area to a sediment trap meeting the relevant requirements of Appendix A-6 of the Manual;
 - c. Install all other required E&SC BMPs as contained in the approved E&SC plan; and
 - d. Contact GEPA when complete with these items to arrange for final inspection. Ensure that a copy of the approved E&SC plan, SWPPP, and other permit documents are available for inspection as required.

PROPOSED PENALTY ORDER:

Based on the foregoing Violations and pursuant to the authority granted to GEPA by 10 GCA Chapter 47 and Public Law 25-152, GEPA hereby notifies Respondent of the Administrator's

decision to issue a penalty order pursuant to 22 GAR §10114(b), which authorizes a civil penalty of no more than Ten Thousand Dollars (\$10,000) per day per violation, up to a maximum civil penalty of One Hundred Twenty-five Thousand Dollars (\$125,000).

GEPA is proposing a total civil penalty amount of Four Thousand, Five Hundred dollars (\$4,500) per violation, per day. In accordance with 22 GAR §10114(b)(2), this penalty is proposed based on the following factors considered by GEPA: 1) The potential for significant direct impact to the marine environment; 2) The highly visible nature of the violation and potential impacts; 3) and Respondent's negligence in failing to install BMPs in accordance with standard industry practice and the approved E&SC plans, despite a long history of working with large projects and following Guam law and regulations.

The total penalty amount will depend on the time frame in which Respondent fully complies with this Order. **The total proposed penalty amount will therefore be provided to Respondent following completion of the Order Items listed under this Compliance Order.**

This order does not prevent GEPA from taking additional actions including the issuance of penalties under 22 GAR §10114(A)(a) or (b). Please also note that if you fail to take the remedial actions listed above within the required timeframe(s), additional violations, remedial actions, and penalties may be assessed by Guam EPA.

RIGHT TO APPEAL:

You may file within thirty days of the date of your receipt of this Notice of Violation/Compliance Order/Proposed Penalty Order, a Notice of Intent to Appeal also known as a Notice of Defense with the Guam EPA's Board of Directors. A copy of the Notice of Intent to Appeal/Notice of Defense is attached for your convenience.

Unless a written request for a hearing signed by or on behalf of the person, agency or business entity named above in this Notice of Violation/Compliance Order/Proposed Penalty Order is hand delivered or mailed to GEPA within thirty days after the Notice of Violation/Compliance Order/Proposed Penalty Order was personally served on you or mailed to you, GEPA may proceed upon the Notice of Violation/Compliance Order/Proposed Penalty Order without a hearing. A request for hearing may be made by delivering the enclosed form entitled "Notice of Intent to Appeal also known as A Notice of Defense", or by delivering a notice of defense as provided in 5 GCA §9205, to the following address:

Guam Environmental Protection Agency Board of Directors
C/o Administrator Guam Environmental Protection Agency
Building 17-3304 Mariner Avenue
Tiyan Barrigada, Guam 96913

If you file a Notice of Intent to Appeal/Notice of Defense, the GEPA's Board of Directors shall hold a public hearing, at which time you may appear and present evidence in person or through counsel in support of this petition.

Failure to file a Notice of Intent to Appeal within the period specified above will constitute a waiver of your right to a hearing. If you waive your rights to a hearing the Notice of

Violation/Compliance Order/Proposed Penalty Order will become final, and GEPA may proceed upon the Order without a hearing and without further notice to you.

Should you have any questions or need additional information, please do not hesitate to contact me and my staff at Water Pollution Control Program or Water Division Chief Engineer, CAPT Brian Bearden, P.E., BCEE at 300-4786 and 300-4779, respectively.

Dangkolu na si Yu'us ma'āse'.

Senseramente,


WALTER S. LEON GUERRERO
Administrator

Attachments: Notice of Defense Form
Inspection Report dated May 27, 2021

cc: GEPA Legal Counsel



Guam Environmental Protection Agency
P.O. Box 22439, GMF,
Barrigada, Guam 96921



NOTICE OF INTENT TO APPEAL (AKA NOTICE OF DEFENSE)

I, _____, have received your Notice of Violation, Order of Compliance and/or Administrative Penalty Order dated _____, charging me for violations and/or imposing penalties and/or other orders, and I wish to:
(Please check appropriate sections)

☐ **A. Request for a hearing and**

- ☐ 1. Object to the accusation on the ground that it does not state acts or omissions upon which the Agency can proceed.
- ☐ 2. Object to the form of the accusation on the ground that it is so indefinite or ambiguous that I cannot identify the infraction or prepare my defense.
- ☐ 3. Wish to prepare new matter in my defense.
- ☐ 4. Admit to the accusation in part.

☐ **B. Admit to the accusation in whole.**

My mailing address is:

SIGNATURE

DATE

GUAM EPA CASE NO.: _____





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MEMORANDUM

May 27, 2021

TO: FILE

FROM: Chief Engineer, Guam Environmental Protection Agency

SUBJECT: Observations of Violations of 22 GAR Chapter 10 at Crowne Plaza Resort, May 26, 2021

At around 6:40 p.m. on May 26, 2021 I was walking past the Crowne Plaza Resort, along the shoreline in Tumon, and observed that the erosion and sediment control (E&SC) best management practices (BMPs) had not been installed in accordance with either the E&SC plans that GEPA had approved for the project, or in accordance with standard BMP installation requirements.

Specifically, I observed that the silt fence had not been installed properly. The plans that GEPA approved had included a double row of silt fence in addition to other measures, which had been required by GEPA to provide additional protection due to the immediate proximity to the shoreline. I observed that the silt fence fabric had not been buried per standard installation requirements. In addition, I observed that the silt fence posts were spaced too far apart and in some cases, were leaning and likely unable to stand up to standard, expected loadings. In some places, the silt fence fabric was held down with sandbags, spaced very infrequently. The use of sandbags is not in accordance with standard silt fence installation and does not make up for failure to bury the bottom of the fabric as required. In other places I observed the bottom of the silt fence fabric installed completely above the ground surface, in some cases by several inches with visible light underneath the fabric, rendering the silt fence completely ineffective.

I also observed an excavated channel leading from the pool area, which appeared to be undergoing demolition or active construction, directly to the beach. Based on my visual observation of grade, this channel would direct surface runoff from the active construction and demolition area to the beach and immediately adjacent marine waters. This channel was not included in the original plans GEPA approved, and would not have been approved as direct discharge of runoff from a construction site to marine waters is prohibited. See attached photos.

BRIAN G BEARDEN
CAPT, U.S. Public Health Service
Chief Engineer, Guam EPA

Digitally signed by
BEARDEN.BRIAN.GAINES.1405922793
DN: c=US, o=U.S. Government, ou=DoD,
ou=PKI, ou=USPHS,
cn=BEARDEN.BRIAN.GAINES.1405922793
Date: 2021.05.27 11:25:38 +10'00'

GUAM EPA | 17-3304 Mariner Avenue Tiyan Barrigada, Guam 96913-1617 | Tel: (671) 300.4751/2 | Fax: (671) 300.4531 | epa.guam.gov
ALL LIVING THINGS OF THE EARTH ARE ONE • MANUNU TODU I MANLALA'LA'

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Photos taken May 26, 2021 at approximately 6:40 p.m.

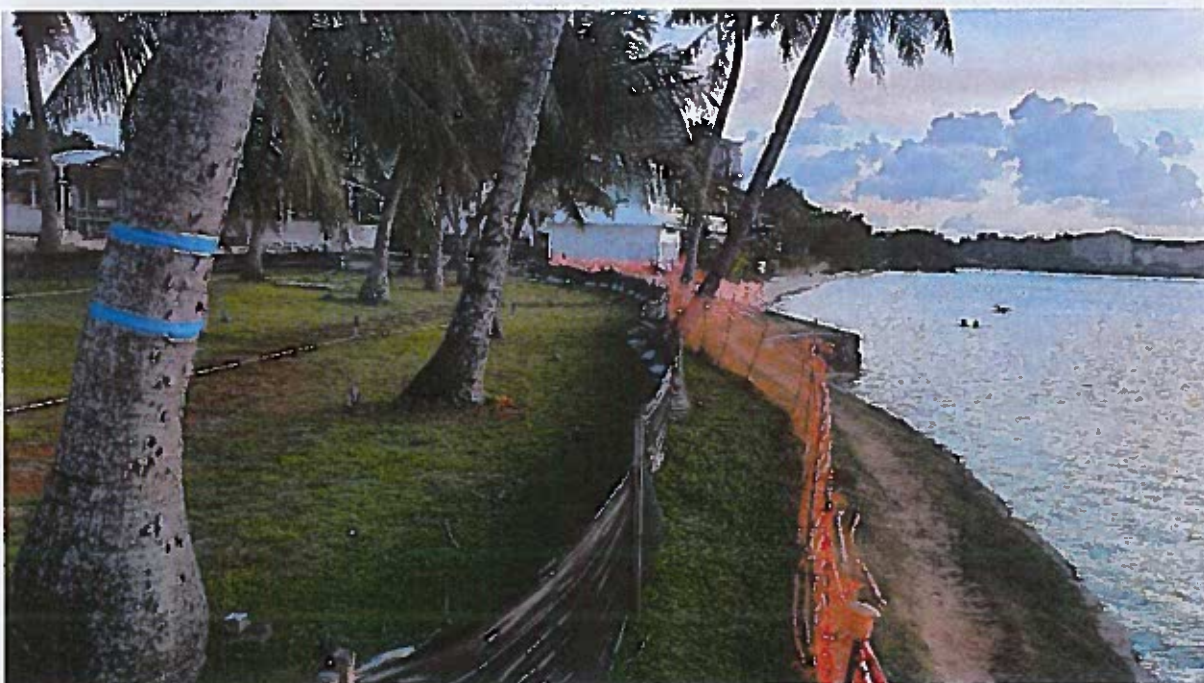


Photos taken May 26, 2021 at approximately 6:40 p.m.





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JEFF KHOO, Project Manager

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